// Property Valuation Topics
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When is a Nursing Home an Apartment House?

Little did the General Assembly know when it enacted 2006 Public Act 183 that it could be sowing the seeds for some interesting mischief.

In that statute, municipalities are authorized to adopt tax relief programs in order to establish a "cap" on annual tax increases for one-to-four-family residential and multi-family properties. Acting under this legislation, the city of Hartford adopted an ordinance which, as the Superior Court recently pointed out, assesses all residential properties "substantially lower than all of property characterized as commercial." Commercial property is assessed at 70 percent of market value while residential property is assessed at 38.869 percent; apartment multi-family property is assessed at 58.08 percent.

The owners of two nursing homes claimed in their tax appeal that the health care facilities should have been treated by the Hartford assessor as either multi-family or residential "because nursing homes are residential dwelling units."

Should a nursing home be treated as an apartment property, i.e., "a building containing five or more dwelling units used for human habitation," or is it a commercial property?

"Nice try but no cigar" (but not in so many words) was the response from Judge Trial Referee Arnold W. Aronson. "Nursing homes are more like a commercial group residential quarters because of their service related functions," he observed. Referring to a Massachusetts Supreme Judicial Court case handed down in 1986, Judge Aronson noted that "[t]he entire economic basis for a nursing home is to provide services rather than simply to provide residential quarters." Noting also the significant degree of regulation carried out by the state of Connecticut over the care given to residents and the general operations of nursing homes and accepting that there may be some superficial symmetry between the residential qualities of a nursing home and an apartment property, Judge Aronson observed, "[t]he relationship between an apartment dweller and the owner of an apartment building is that of a landlord/tenant relationship; however, the relationship between a nursing home owner and nursing home resident is that of a provider/patient."

The statute in question is limited in its practical application to the city of Hartford.

Hartford/Windsor Healthcare Properties, LLC and Trinity Hill Realty, LLC v. City of Hartford, Docket No. CV074014469 and CV074014470, Superior Court, Judicial District of New Britain (April 2, 2008).

For further information please contact Laura A. Bellotti at 860-424-4309 or by email at lbellotti@pullcom.com.

IRS Appraiser Penalties – A New Challenge for the Profession

The importance of real estate appraisals in federal (and state) tax related planning and transactions cannot be underestimated. Valuing a parcel of real estate for gift or estate tax purposes or for pre mortem planning is elementary. Apparently to counter appraisal abuses, Congress enacted penalty provisions in the 2006 Pension Protection Act "for substantial or gross valuation statements."

Anyone who prepares an appraisal and "who

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knows, or reasonably should have known, that the appraisal would be used in connection with a return or claim for a refund . . . and which appraisal results in a substantial valuation statement . . ." is potentially liable for a penalty. The penalty can be as much as 10 percent of the improper underpayment of tax attributable to the appraisal misstatement.

Real estate appraisers (and "any other person," however that may be interpreted by the courts and the Internal Revenue Service) now must be extra cautious about appraisals that will find their way to the IRS. "At the very least," William S. Forsberg and U. F. Drake write in the September/October 2007 issue of *Probate & Property*, "appraisal costs could increase precipitously because of the real or perceived risk that the penalties will apply in any case."

Concern also exists about the ability of the IRS to "blacklist" appraisers for erroneous appraisals with the additional worry that any IRS action may filter over to state licensure authorities who could well see IRS action as tantamount to non contestable discipline at the state level.

For further information about this development, please contact Gregory F. Servodidio at 860-424-4332 or by email at gservodidio@pullcom.com.

Homeowners Association Appeals Assessor's Valuation of Common Areas

Breezy Knoll is a private vacation community located on a lake in the rural town of Morris comprised of 19 individual residential properties.

The homeowners' association owns parcels used as a parking lot and tennis court, as well as a 10-foot strip located along the shoreline of the lake. The three parcels are affected by easements in favor of the Breezy Knoll residents which assure them exclusive access to these areas; the association must maintain them for the benefit of its members.

Substantial ad valorem assessments of these properties were upheld at trial. On appeal, the Connecticut Supreme Court ruled that because of the easements and restrictions placed on the three parcels, they had no intrinsic market value and the benefits they create for the individual lot owners should be added to the value of the lot owners' properties for property tax purposes. Since the "Association's members are not likely to consent to release these easements and restrictions – a necessary prerequisite to marketability," the Supreme Court held that the properties should have been valued only at nominal amounts.

Agreeing that the three properties owned by the Association were valuable if the easement and restrictions were not considered, in the unanimous opinion by Chief Justice Chase Rogers, the Supreme Court ruled that the market value of the properties had "effectively . . . been transferred to (the lot owners) who are entitled to enjoy them, . . . namely, the individual owners within Breezy Knoll who constitute the Association's membership."

"In other words," the Chief Justice stated, "the assessments of the individual properties owned by the Association's members should reflect the enhancement to the value of their properties attributable to the easements and restrictions."

Breezy Knoll Association, Inc. v. Town of Morris, 286 Conn. 766 (May 13, 2008)

If you have any questions or comments, please contact Elliott B. Pollack at 860-424-4340 or by email at ebpollack@pullcom.com.

Benefits of the Property Tax System Discussed

In the April 2008 issue of *Land Lines*, the magazine published by The Lincoln Institute of Land Policy, Gregory K. Ingram asserts that "property taxes are extremely well suited as a source of funding for local services and they are widely used in both industrial and developing countries."

The transparency of the property tax is also a benefit, he argues. Periodic adoption and adjustment of the property tax encourages taxpayers to spend more time with local government leaders and to participate more significantly in local elections to confirm that tax revenues are being properly levied and spent.

Tackling the claim by some critics that ad valorem property taxes are "regressive," Mr. Ingram terms this attack to be "problematic." He asserts that the services paid for by local property taxes frequently approximate good value. He also argues that to the extent that higher taxes frequently enable a higher quality of services, "the value of (those) services . . . is often capitalized in property values."

Mr. Ingram concedes that property taxes which pay for services "that spill over municipal boundaries" may present good arguments about the proper level of a particular local tax, but believes this sort of social engineering is atypical and results in the property tax being used for purposes for which it was not originally intended.

Selective Assessment Increases Now Possible

The Connecticut General Assembly has passed and the governor has signed a potentially far reaching amendment to Connecticut's assessment statutes. Section 12 of Public Act 08-185 permits a locality to require its assessor to increase the market value of real estate by category based on sales "or other data that may be lawfully used . . . ." The maximum annual increase is five percent. Unfortunately, notice of the increase is not required although taxpayers who carefully watch their real property tax bills should be able to pick up this "special" increase.

For further information, or for a copy of the Public Act, contact Elliott B. Pollack at 860-424-4340 or by email at ebpollack@pullcom.com.

2008 Revaluations Loom

Thirty-seven Connecticut communities are scheduled to go through town-wide real property revaluations as of their October 1, 2008, grand lists. These new values will form the basis for property tax bills payable commencing July 1, 2009, and for five years thereafter, that is unless the General Assembly alters the current five year revaluation cycle! Among the larger communities calendared for revaluations are Avon, Bridgeport, Canton, Darien, New Canaan, New London, Norwalk, Norwich, Old Saybrook, Rocky Hill, Torrington, Wethersfield, Windsor and Windsor Locks.

Please feel free to contact any member of the Pullman & Comley Valuation Department for further information, including a complete list of all communities planning to revalue in 2008.

ATTORNEY NOTES

Hartford partners **Laura A. Bellotti** and **Gregory F. Servodidio** participated in a seminar on Connecticut State and Local Tax Issues at the Cromwell Marriott on November 7, 2008. Please contact **Laura A. Bellotti** at lbellotti@pullcom.com to obtain copies of the materials.

Elliott B. Pollack spoke on 2008 Connecticut Property Tax developments at the University of Connecticut annual commercial real estate conference in Farmington on November 13.